



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-S-

DATE: SEPT. 24, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an entrepreneur and computer programmer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

With respect to his proposed endeavor, the Petitioner asserted at the time of filing that he intended "to become a Software Engineer researcher/University faculty."³ He further stated: "I would like to apply for full time faculty position at an American University or a best fit position in an IT [information technology] company." In addition, the Petitioner contended that he could seek employment as a computer and information systems manager, sales engineer, or chief technology officer.

The Director issued a request for evidence (RFE) asking the Petitioner to provide clarification as to which one or more of these endeavors he intends to pursue in the United States. He was informed that if he intended to pursue multiple endeavors, he should provide information and evidence regarding his specific plans for each undertaking and explain how his time will be divided among them.⁴

In response to the Director's RFE, the Petitioner indicated that he intends "to establish a computer company in the United States and contribute to the U.S. economy." The Petitioner, however, does not elaborate on the types of products and services his proposed U.S. computer company will provide. Nor does the record demonstrate that this endeavor will offer substantial economic benefits to the region in the United States where his company will operate or to the nation. For instance, the Petitioner has not identified the location of his company's operations in the United States, nor has he

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner listed multiple universities where he could "apply for faculty/research position[s]" (including [REDACTED], and [REDACTED], but did not provide evidence of his communications with them or their interest in having him teach or conduct research. As the Petitioner is applying for a waiver of the job offer requirement, he need not have a job offer from a specific employer. Nevertheless, information about the nature of his proposed endeavor is necessary for us to determine whether it has substantial merit and national importance, and whether he is well positioned to advance such an endeavor.

⁴ The Director further explained that the Petitioner's initial statement "was too general with respect to how he intends to accomplish any one of the potential endeavors." For example, while the Petitioner identified various universities and described their research programs that interested him, he did not provide specific details about the projects he will undertake or evidence to support his particular research plans.

provided information regarding any projected job creation resulting from his proposed business. The evidence does not show that his proposed computer company's benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In addition, the Petitioner states: "Should my attempts to establish a computer company be fruitless, I will seek employment as a computer programmer or IT Manager at a U.S. company."⁵ The Petitioner asserts that he "will apply for a suitable position at: [REDACTED]"

[and] [REDACTED] The record, however, does not include documentation of the Petitioner's communications with these organizations or their interest in hiring him. Nor is there information or evidence indicating the type of computer programming or IT work he will undertake on their behalf.

Furthermore, the Petitioner indicates:

I will also continue to undertake my research activities in the United States and will enhance the knowledge about computer science and specifically computer programming I have committed myself to conducting research on computer science subjects and will never stop from doing so if admitted to the United States. I will author and publish articles and books and will contribute to the computer field in the United States.

The record does not include supporting documentation to corroborate the Petitioner's assertion that he will pursue computer science research in the United States, nor has he identified the specific research projects he will undertake. Despite the Director's request for clarification, the Petitioner has not provided sufficient information and evidence regarding his specific proposed activities in the United States. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The record does not sufficiently explain the Petitioner's proposed endeavor(s) such that we are able to determine, without additional information and evidence, that his work will have both substantial merit and national importance and that he is well positioned to advance his proposed endeavor. Furthermore, the Petitioner has not established

⁵ The record includes information from *Wikipedia* about the computer programming field, an article from *FastCompany.com* indicating that computer coding is an in-demand skill set, and an article in *USA Today* discussing the need for computer programming education. While these articles demonstrate the substantial merit of computer programming, they are not sufficient to establish the national importance of the Petitioner's proposed endeavor. The relevant question is not the importance of the fields, industries, or causes for which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In addition, the Petitioner points to the aforementioned articles and employment projections from the U.S. Department of Labor's Bureau of Labor Statistics as documentation showing "the shortage and need for computer programmers in the U.S." The projected shortage of computer programmers in the United States does not render the work of an individual computer programmer nationally important under the *Dhanasar* framework. We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

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that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of R-S-*, ID# 1563749 (AAO Sept. 24, 2018)